

The sale of certain types of tangible personal property used in production agriculture is not subject to Illinois Retailers' Occupation Tax and Use Tax. See 35 ILCS 120/2-5(2). (This is a GIL.)

July 21, 2003

Dear Xxxxx:

This letter is in response to your letter dated May 29, 2003. The information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See, 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/Laws/regs/part1200>.

In your letter you stated and made inquiry as follows:

Would you please submit in writing the statue concerning the taxation of the following items. We are specifically trying to identify if these items are exempt from sales tax in the state of Illinois sold to farmers.

Bull Semen  
Cattle Insemination  
AI Equipment  
AI Supplies  
Animal Care Products  
Liquid Nitrogen  
Insecticides  
Biostat Tank Sales and Rentals

Could you also send us a Sales and Use Tax Information Book.

Thank you for your assistance in this matter.

Please find enclosed several Department regulations that will be of assistance to you in determining your tax liability with regards to the sale of the items listed in your letter. General information is also provided below to assist you. Additionally, a copy of the Department's "ST-19 Retailers' Tax Booklet" is enclosed for your use.

In general, the Illinois Retailers' Occupation Tax is imposed upon the total gross receipts received by retailers who make sales of tangible personal property to Illinois end users. Unless the sales are specifically exempted, such retailers must collect and remit the sales tax. See 86 Ill. Adm. Code 130.101. Please note that Co-operative Associations organized for the purpose of purchasing or producing, and selling tangible personal property to its members or others are deemed to be operating for pecuniary profit. As such their receipts from all retail sales of tangible personal property are subject to Retailers' Occupation Tax, unless such sales are otherwise exempt. Such is also the

case for Agricultural Co-operative Associations organized under the Agricultural Co-operative Act [805 ILCS 315]. See 86 Ill. Adm. Code 130.1945.

It is possible that some of the items about which you are inquiring as to taxability will be used in production agriculture. In certain cases, the sale of tangible personal property used in production agriculture is not subject to Illinois Retailers' Occupation Tax and Use Tax. Production agriculture is defined under the Retailers' Occupation Tax Act as "the raising of or propagation of livestock; crops for sale for human consumption; crops for livestock consumption; and production seed stock grown for the propagation of feed grains and the husbandry of animals or for the purpose of providing a food product, including the husbandry of blood stock as a main source of providing a food product. Production Agriculture also means animal husbandry, floriculture, aquaculture, horticulture, and viticulture." See 35 ILCS 120/2-35.

Please refer to the following Department regulations for guidance on the taxability of the items listed in your letter: 86 Ill. Adm. Code 130.2100 "Sellers of Feed and Breeding Livestock", 86 Ill. Adm. Code 130.1955 "Farm Chemicals", and 86 Ill. Adm. Code 130.305 "Farm Machinery and Equipment".

Under Department regulation 86 Ill. Adm. Code 130.2100, sellers of semen used for artificial insemination of livestock for direct agricultural production are not liable for Retailers' Occupation Tax with respect to gross receipts realized from such sales. See Section 130.2100(d).

Vendors of farm chemicals used in production agriculture are also exempt from Retailers' Occupation Tax on their gross receipts from such sales under the authority of 86 Ill. Adm. Code 130.1955. Farm chemicals include any chemical product used in production agriculture, the products of which are to be sold, or in the production or care of animals that are to be sold or the products of which are to be sold. Examples of exempted farm chemicals include stock sprays, disinfectants and the like, stock tonics, serums, vaccines, poultry remedies and other medicinal preparations and conditioners, water purifying products, insecticides, weed killers and the like. See Section 130.1955(b).

Under 86 Ill. Adm. Code 130.305 "Farm Machinery and Equipment", Illinois sales tax does not apply to the sale of machinery and equipment, both new and used and including that manufactured on special order, used or leased for use primarily in production agriculture or for use in State or Federal agricultural programs. The sale of individual replacement parts for such machinery and equipment is also exempt. In order to obtain the exemption, the purchaser must certify to the use primarily in production agriculture of the equipment or machinery. See Section 130.305(a).

Machinery means major mechanical machines or machine components thereof contributing to the production agriculture process or used primarily in State or Federal agricultural programs. Machinery would include such things as tractors, combines, balers, irrigation equipment and cattle and poultry feeders. Improvements to real estate such as fences, barns, roads, grain bins, silos and confinement buildings are not considered exempt farm machinery. However, certain machines qualify for the exemption if purchased by farmers directly from retailers even though they are installed as realty improvements. Such machinery includes, but is not limited to, augers, grain dryers (heaters and fans), automated livestock feeder bunks (but not ordinary building materials) automatic stock waterers (powered by electricity or water pressure and built into a permanent plumbing system), and water pumps serving production areas, and specialty heating or lighting equipment specifically required for the production process. See Section 130.305(i).

Equipment means any independent device or apparatus separate from any machinery, but essential to production agriculture. Although equipment does not include ordinary building materials affixed permanently to real estate, certain items of equipment can qualify for the exemption even

though they are installed as realty improvements. Such items of equipment include, but are not limited to, farrowing crates, gestation stalls, poultry cages, portable panels for confinement facilities and flooring used in conjunction with waste disposal machinery. Equipment shall include precision farming equipment that is installed or purchased to be installed on farm machinery and equipment including tractors, harvesters, sprayers, planters, seeders and spreaders. The exemption also includes hand-operated equipment such as wheelbarrows, hoes, rakes, pitchforks and shovels so long as they are used in production agriculture. Hand tools that are used in maintenance activities, such as wrenches, pliers, wire stretchers, grease guns, hammers and screwdrivers, and not used in production and do not qualify for the exemption. Supplies such as baling wire, baling twine, work gloves, boots, overshoes and chemicals for effluent systems are also not exempt. See Section 130.305(k).

You letter also mentions the rental of at least one of the items listed. Please note that in Illinois, lessors of tangible personal property under a true lease, other than automobiles leased for terms of one year or less, are considered to be the end users of the property to be leased. See enclosed copies of 86 Ill. Adm. Code 130.220 and 130.2010. A true lease agreement exists if at the end of the lease term there is no option to purchase the property and the property is returned to the lessor. If there is an option to purchase in the lease agreement, it must be for the fair market value of the property in order to maintain the character of the true lease. As the end users of tangible personal property located in Illinois, lessors incur Use Tax on the lessors' cost price of the property. Since lessors are considered the end users of the property and have paid Use Tax, no Retailers' Occupation Tax is imposed upon the rental receipts and the lessees incur no Use Tax liability for the rental charges. However, under 86 Ill. Adm. Code Section 130.305(n), farm machinery and equipment purchased for lease to be used by the lessee primarily in production agriculture or in a State or Federal agricultural program qualify for the exemption. Therefore, the lessor will not incur Use Tax on the purchase of the machinery or equipment if at the time of the sale, the purchaser-lessor certifies that the equipment or machinery will be used primarily in production agriculture. Should the purchaser-lessor subsequently lease the machinery or equipment primarily to lessees who do not use it in a manner that would qualify for the exemption, the purchaser-lessor will become liable for the tax from which he was previously exempted. See Section 130.305(n).

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Sincerely,

Dana Deen Kinion  
Associate Counsel

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